IN THE HIGH COURT OF JUDICATURE AT MADAS

DATED:05.02.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

S.A.NO.98 OF 2007
and
M.P.NO.1 OF 2007

1.S.Narayanasamy Gounder
2.S.Samiyappan ...Appellants/Claimants

Vs.

1.Adi Parasakthi Charitable Medical
Educational and Cultural trust
rep. by its Vice President
Mrs.Lakshmi Bangaru

2.Gopalsamy

3.N.Subramanian ...Respondents/Defendants

This second appeal is filed against the judgment and decree passed in A.S.No.78 of 2005 on the file of Additional District and Sessions Court (Fast track Court No.1), Coimbatore dated 25.4.2006 confirming the judgment and decree of the trial Court in O.S.No.297 of 2003 on the file of Sub Court, Tiruppur dated 5.5.2005.

For Appellants:Mr.S.Parthasarathi
Senior Counsel
Mr.M.M.Sundresh
For Respondents:Mr.AR.L.Sundaresan
Senior Counsel
for Mr.A.S.Balaji

J U D G M E N T

The appellants, whose request for a declaration that a settlement deed marked as Ex.A3 before the trial Court is invalid and for consequential prayers on being rejected by both the Courts below have brought forth this second appeal.

2. The short facts which lead the plaintiffs to file the said suit are that the suit property belonged to the plaintiffs by a partition deed dated 18.9.1952 and they have been in enjoyment of the same. By a lease deed dated 22.6.1994 which is marked as Ex.A1, a lease was executed for a period of 30 years for conducting various works of Varavalipattu

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Magalir Manram and the suit property was leased out to the first defendant temple for Re.1 per annum and accordingly it was carried on. It was represented in the year 2003 by defendants 2 and 3 that A.K.Venkatasamy who was representing the first defendant all along under the lease deed was not associated as he was in the past and they have insisted for transfer of the lease in favour of the first defendant and on their representation, the first plaintiff put the signature and the second plaintiff put the thumb impression in the settlement deed Ex.A3. The first plaintiff was 81 years old who was not educated well and the second plaintiff was affected with paralytic attack . Since they are having confidence on defendants 2 and 3, they signed the document without reading the contents of the said settlement deed. But, it was the fraudulent act committed by defendants 2 and 3 and hence the said document should be declared as invalid and consequential injunction should be granted to the plaintiffs.

3. The suit was resisted by the defendants stating that the first defendant viz. the Adi Parasakthi Educational, Medical and Cultural trust, is the Public Religious and Charitable Trust having its head office at Melmaravathur and there are Magaliar Manrams throughout the State. A request was made by the wife of the second defendant through an application for functioning Varavalipattu Manram and on the basis of which, it was allowed to be constituted at the place in question situated at Tiruppur. At the earliest instance, the plaintiffs came forward to give the entire suit property as gift to the first defendant temple consisting of 7800 sq.ft. in the year 1982 to construct Sakthi peedam But in the year 2003, they required 120 sq.ft. from the said 7800 sq.ft. for the purpose of selling pooja materials. The first defendant admitted the same and registered a settlement deed for 7680 sq.ft. While the matter stood thus, in view of the query in the Audit side, the lease deed was felt necessary and it was executed on 22.6.1994 under Ex.A1. It is not correct to state that initially it was only executed in favour of one A.K.Venkatasami and subsequently it was executed only in favour of the first defendant who was represented by the said A.K.Venkatasami. While the matter stood thus, the plaintiffs came forward to execute the settlement deed in favour of the first defendant to carry on the functions of Manram in the year 2003 whereby they wanted to put an end to the lease deed. Hence, Ex.A3 settlement deed was prepared and after going through the document, the first and second plaintiffs made signature and affixed thumb impression respectively . The settlement deed was also a registered one. The plaintiffs paid part of the registration fee and since it was found that deficit court fee was paid, they came forward to state that since the first defendant was the beneficiary and apart from that since it is a charitable trust, 50% of the fee may be remitted and hence they have paid the same. The case of the plaintiffs that there was a default committed by defendants 2 and 3 intentionally and after giving property by way of settlement deed, now they came forward to state that they want to change the name from A.K.Venkatasami to the first plaintiff and hence the suit must be dismissed.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The trial Court framed necessary issues, tried the suit and dismissed the same. Aggrieved, the plaintiffs took it on appeal and the appeal was also dismissed. Under such circumstances, the second appeal has been brought forth.

5. Advancing his arguments on behalf of the appellants, learned counsel would submit that in the instant case, the property was originally belonged to the plaintiffs which is an admitted fact and from 1982-83, Magaliar Manram was initially started, but the management was in the hands of the first plaintiff since he is the strong believer of Melmaruvathur Adi Parasakthi. While the matter stood thus, there arose a understanding, that there should be a lease deed which is marked as Ex.A1 and the lease amount was also explained as it is Rs.1 per annum and it was being carried on. Under such circumstances, there was no need for executing any settlement deed under Ex.A3. The first plaintiff was admittedly 81 years old and the second plaintiff though was a graduate, he was affected with paralytic attack during the relevant point of time. They believed the words of defendants 2 and 3 and on that belief, they signed the Ex.A3 settlement deed and it is true that it was subject to registration. It is pertinent to point out that even without going through the said document, they signed the document, since it was represented that the document is registered only to change the name of A.K.Venkatasami, a representative of the first defendant to the name of the first plaintiff. Under such circumstances, they had no suspicion to enter into a lease deed and they signed the document and later they came to know that the act of the defendants 2 and 3 is fraud. Both the Courts have erroneously considered that aspect of the matter. There was sufficient pleadings in Paragraphs 4 and 5 as to the fraud committed by defendants 2 and 3, but both the Courts below have committed a serious error of law in not holding that Ex.A3 has been obtained by misrepresentation and it is sham and nominal and therefore the same cannot be relied upon. Apart from that Section 42 of the Indian Evidence Act is not a bar for the plaintiffs to establish by oral evidence that Ex.A3 has been obtained on misrepresentation and therefore it is sham and nominal. Both the Courts below have committed a serious error of law in not considering Ex.A1 to A44 in support of the plaintiff's case and to prove the factum of possession, it is clear that they are paying electrical charges for Magalir Manram. As contended by the learned counsel for the first defendant, the first defendant has not questioned in the original written statement of making electricity charges continuously , which would go to show that the management was continued with the plaintiffs and apart from this, the first plaintiff was 81 years old who was ill-literate and the second plaintiff was affected by paralytic attack during the relevant point of time. It was quite evident from the evidence that under the said circumstances, there was no material available to hold that the document was tainted by invalidating factors. Both the Courts should have considered the question of fraud as well as lackness that are available. But it is not done so. Hence, this Court can

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

consider the appeal and dispose of the same after framing substantial questions of law.

6. Heard the learned Senior counsel for the intervenor on the above contentions.

7.After careful consideration of the rival submissions, this Court is of the considered view that this second appeal does not require admission in the hands of this Court and this Court is unable to notice any merit whatsoever. Admittedly, the landed immovable property of 7800 sq.ft. originally belonged to the plaintiffs. It is not a fact in controversy that the plaintiffs came forward to give the land as gift for running a Magaliar Manram from 1982 onwards. The first contention of the plaintiffs was that while it was constituted, the first plaintiff was in management of the said Manram, and after starting the Magaliar Manram, the first plaintiff was making payment of electricity charges to show that he was managing the affairs of the Magaliar manram. It is pointed out that the first plaintiff cannot carry on the said Manram, since the woman folk can only manage the affairs of the Magaliar Manram. According to the defendants 2 and 3, at the time of constitution, on an application made by the wife of the second plaintiff along with other devotees of Adi Parasakthi, a Vara Valipattu Manram was constituted wherein the wife of the second plaintiff was to carry on the affairs of the Magalir Manram and it has got to be accepted, since there is no contrary evidence. It is an admitted fact that there was a lease deed executed between the parties under Ex.A1 in the year 1994 as stated above, wherein it is also admitted that the first defendant was the lessee represented by A.K.Venkatasami and hence A.K.Venkatasami was not the lessee. Under Ex.A1 lease deed, it was understood that the lease was only Re.1/- per annum. The state of affairs continued as such till 2003,when there was a settlement deed executed by the plaintiffs under Ex.A3. It was the subject matter of attack by the plaintiffs before the trial Court, the first appellate Court and also before this Court . The point for consideration is whether the document in question Ex.A3 is valid or not. A duty is cast upon the person who came forward to attack the same on the ground of any one of the invalidating factors like fraud, misrepresentation etc., and in the instant case, this Court is of the considered opinion that a reading of the plaint would go to show that the averments in paragraphs 4 ,5 and 6, are thoroughly lacking and what are all stated is that there was a representation that there was a change in the name of the lessee and therefore new deed has been prepared and without reading the same, the first plaintiff made a signature and the second plaintiff affixed thumb impression on the said document. It is pointed out that it is not in dispute that though the first plaintiff is 81 years old, he is not lacking in eye sight and the second plaintiff is not only a graduate, but also a retired Deputy Director of Agriculture during the relevant time. It is not in controversy that he was affected by paralytic attack and hence they did not suffer any disability from looking into or reading the document. Once a deed was placed before them for getting signature , they should have read the document and signature should have been made after reading the same. In

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the case of the second plaintiff who made the thumb impression on the said document, he was a retired Deputy Director of Agriculture. One cannot visualize the situation that even without reading the document he could have affixed the thumb impression in the document. This Court is of the considered opinion that the signing of the document by the first plaintiff and affixing the thumb impression by the second plaintiff, even without reading of the same, cannot be believed and after reading the averments made in paragraphs 4,5 and 6 of the plaint, it seems that pleading in that regard lacks and it is not sufficient. Apart from that, in so far as the evidence is concerned, in the cross examination the second plaintiff stated that when he was sitting in the Car, the document was brought by the staff of the Sub-Registrar office and he was not the Sub-Registrar and he has affixed thump impression in the said document. He was able to differentiate the staff of the Sub-Registrar from the Sub-Registrar Office and from the cross-examination, it was proved that he was mentally alright. At this juncture, it is pointed out that the document was a registered one. As could be seen that the document was a registered in the Sub Registrar Office at Tiruppur, but it was not mentioned in the course of entire pleading how they went to the office of the Sub Registrar, how they signed and how it was registered and who identified them, but they have simply pleaded that fraud and misrepresentation were committed. The other strong circumstance is the payment of the registration charges as per the said document which was paid by the first plaintiff. Under such circumstances, the first plaintiff could have paid the charges only with the knowledge and after verification by the Sub-Registry and nowhere in the course of the plaint it is mentioned. The contention that it is a matter of evidence and hence it can be adduced by way of evidence cannot be accepted for the simple reason that the only attack is the said document as it is tainted by invalidating factors of fraud and misrepresentation. If to be so, necessary and requisite factual position must be pleaded and without that,evidence cannot be looked into by a Court of law.One of the main circumstances is that the plaintiffs with full knowledge, settled the property in question and they have executed the same, as it is quite evident from the fact that they retained a smaller piece of land in front of the suit property for running a stall for the sale of pooja materials. Originally the lease deed Ex.A1 was for an extent of 7800 sq.ft, out of which, the settlement was only for an extent of 7680 sq.ft.. and thus a smaller piece of land 120 acres was retained by the settlers. Both the Courts below have marshaled the evidence proper and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

taken the reasoned view in the instant case and this Court is unable to notice any question of law much less substantial question of law to be framed by this Court. Accordingly, the Second Appeal fails and the same is dismissed. No costs. Consequently, M.P.1 of 2007 is also dismissed.

Vjy

Sd/-
Assistant Registrar,

/ture copy/

Sub Assistant Registrar.

To

1.Additional District and Sessions Court
(Fast track Court No.1), Coimbatore
2. Subordinate Judge, Tiruppur.

+ One cc to Mr. M.M. Sundresh, Advocate SR 7138
+ One cc to Mr. A.S. Balaji Advocate SR 6690
AVM (co)
sg 27/2/07

S.A.NO.98 OF 2007
AND
M.P.No.1 of 2007

05.02.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/